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**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

In the Matter of:	)	Supreme Court
	)	No. R-14-0027
PETITION TO AMEND	)	
RULE 11 OF THE RULES OF	)	<b>Response from Maricopa</b>
PROCEDURE FOR	)	<b>County Justice Court Bench</b>
EVICITION ACTIONS	)	

**BACKGROUND**

The author of this pleading is the Associate Presiding Justice of the Peace for Maricopa County. After a discussion of the proposed amendment to the Rules of Procedure for Eviction Actions (RPEA), both over e-mail and in person, a vote was taken at our monthly bench meeting to authorize this response.

By any standard, the Justice Courts in Maricopa County have an extremely high eviction workload. Although some individual courts have eviction caseloads that are much higher than others, the system, as a whole, handles on average in excess of 5,000 cases per month. From July 2014 through April 2015, 52,916 eviction actions were filed in Justice Courts in Maricopa County.

The concerns raised by the Petitioner on behalf of out-of-state landlords have value; but, statewide, the party in a landlord and tenant case who is the most likely to request a telephonic appearance is a self-represented tenant. This is true both in rural areas, where the justice court may be on the other side of a geographically large county, and in urban areas. By way of example, the North Valley Justice Court has jurisdiction over Anthem, parts of Glendale and parts of Phoenix, but is located (along with three other Justice Courts) in Surprise, in a facility that is not served by any form of public transportation.

## **I.**

### **AMENDING THE RULES OF PROCEDURE FOR EVICTION ACTIONS WITH A RULE OF PROCEDURE DESIGNED FOR FAMILY COURT CREATES PROBLEMS CONCERNING LEGAL TERMS OF ART, CONCERNING SCHEDULING, AND CONCERNING STATUTORY REQUIREMENTS.**

Consistent with the Chief Justice's strategic plan to promote access to justice and to our courts, we do not oppose a rule that would specifically authorize telephonic appearances in eviction actions. Many, if not most, Justice Courts already authorize such appearances. However, there are several problems with the language of the proposed amendment.

First, the proposed rule refers to an "evidentiary hearing." That is a term of art and there are no evidentiary hearings in residential eviction

actions.<sup>1</sup> If the rules are amended in a way that adds this term to the RPEA, then parties will start demanding evidentiary hearings on potentially a variety of topics or points of law. The only limits would be the imagination of the party making the request.

Second, the proposed amendment does not require a written request to appear by phone. The Family Court rule that it is based on does have detailed pleading requirements.<sup>2</sup> A similar rule for Probate Courts also requires a written request to appear by phone.<sup>3</sup> In its' current form, the suggested rule change would allow a party to call in at the time set for the initial appearance and verbally request to appear by phone. Allowing such a procedure would be impractical. In addition, the proposed language ("the court may, in its' discretion, rule upon said request with or without a hearing") arguably creates a new type of hearing on the issue of whether to allow telephonic testimony.

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<sup>1</sup> There is an initial appearance and then a trial. RPEA 11. Although eligible for a jury trial, residential eviction actions are summary proceedings. A.R.S. § 12-1176; RPEA 12. A judgment can be signed after a brief conversation among the judge and the parties and often without the need for witness testimony or anything that looks like a formal trial. RPEA 11. The case will begin by the judge calling it and asking the tenant whether the allegations in the complaint are true. RPEA 11(b). If the tenant disputes the factual allegations, then the judge will make a decision after a trial has been held; however, that trial could be held that same day as the initial appearance.

<sup>2</sup> Arizona Rule of Family Law Procedure 8(D).

<sup>3</sup> Arizona Rules of Probate Procedure 11(A). The rule begins, "Upon timely written motion or on the court's own motion, a judicial officer may allow telephonic appearance or testimony ..." Id.

Third, the proposed language sets up a procedure that would likely violate the statutory time standards for residential eviction actions. In Arizona, residential actions are, by statute, designed to be resolved within an extremely short window in Justice Courts. When an eviction action is filed, the Justice Court must immediately issue a summons.<sup>4</sup> The summons and complaint can then be served on the tenant by what is often called a “nail and mail” posting.<sup>5</sup> This service need only be made two days before the initial appearance date.<sup>6</sup> In a contested case, there is a preference for holding the trial on the initial appearance date<sup>7</sup> and when a delay is requested, in justice court, it cannot be for longer than three days.<sup>8</sup>

Given the courtroom time demands for other types of cases, many Justice Courts have established calendars where eviction cases are heard two days each week. Under the proposed amendment, a party may have until two days after an answer is filed to object to a request for telephonic testimony (and perhaps to even request that a hearing be held on that

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<sup>4</sup> “The summons shall be issued on the day the complaint is filed and shall command the person against who the complaint is made to appear and answer at the time and place named which shall be not more than six nor less than three days from the date of the summons.” A.R.S. § 33-1377(B); *See also*, A.R.S. § 12-1175(A)(The summons must be issued “no later than the next judicial day”).

<sup>5</sup> A.R.S. § 33-1377(B); RPEA 5(f).

<sup>6</sup> A.R.S. § 12-1175(C); A.R.S. § 33-1377(B).

<sup>7</sup> RPEA 11(c).

<sup>8</sup> A.R.S. § 12-1177(C); A.R.S. § 33-1377(C); RPEA 11(c).

objection). If the answer is filed five minutes before a trial, and the case has already been delayed once because the trial was not held on the date of the initial appearance, it would be difficult for most Justice Courts to allow two days to respond without violating the required time standards.

## **II.**

### **ANY AMENDMENT TO THE RULES OF PROCEDURE FOR EVICTION ACTIONS ALLOWING FOR TELEPHONIC APPEARANCES SHOULD CONTAIN CLEAR LANGUAGE AND A REFERENCE TO THE REQUIRED TIME STANDARDS.**

The recommended language is consistent with what is used in other sets of court rules; but it is perhaps written in a style that is inconsistent with the goal of having self-represented litigants being able to read our rules and to be able to understand what is expected of them. For example, it begins with an 80 word sentence. It also contains arguably unnecessarily legalistic language, such as “shall file a request for same with the filing” and “Opposition to said request.” In addition to being simple, any amendment must make it clear that a request for telephonic testimony, in and of itself, will not delay a residential eviction case. Accordingly, we recommend the following language as a new RPEA 11(d)(3):

**(3) Telephonic Appearance.** A party may request, that either themselves or a witness, appear by telephone at either an initial appearance and/or a trial. This request must be in writing and must be made in advance of the time of the scheduled court date. The opposing party shall be given an opportunity to object to this request. A request for a telephonic appearance shall not delay the times set by statute for proceeding with an eviction action.

### **CONCLUSION**

While we have no objection to the concept of allowing parties to eviction actions to request telephonic appearances for either themselves or their witnesses, we do have some significant concerns about the language of the proposed amendment. If the RPEA is to be amended to formalize the practice (that already exists in many if not most Justice Courts) of allowing telephonic testimony, then the amended language should be consistent both with the goals of the RPEA and with the time standards for eviction cases that are required by law.

RESPECTFULLY SUBMITTED, this \_\_\_\_ day of May 2015.

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